

EXPLANATORY STATEMENT

Issued by the authority of the Group Manager, Families & Communities Reform Group, Department of Social Services

Social Security (Administration) Act 1999

Social Security (Administration) (Trial – Declinable Transactions and Welfare Restricted Bank Account) Determination 2018

Purpose

This Determination is made by the Group Manager, Families & Communities Reform Group, as a delegate of the Secretary of the Department of Social Services, under subsections 124PP(1) and 124PQ(2) of the *Social Security (Administration) Act 1999* (the Act).

Subsection 124PP(1) of the Act provides that the Secretary may, by legislative instrument, determine a kind of bank account to be maintained by a trial participant or voluntary participant in the cashless debit card trial under Part 3D of the Act (the Trial). This Determination sets out the kind of bank account to be maintained by a participant in the Trial. Subsection 124PP(2) of the Act provides that the legislative instrument determining a kind of bank account may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account. This Determination prescribes these terms and conditions.

In accordance with subsection 124PQ(2) of the Act, the Secretary may by legislative instrument declare a kind of business, whether by reference to merchant category codes, terminal identification codes, card accepted identification codes or otherwise, in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution.

This Determination supports cashless welfare arrangements to be in place until 30 June 2019. Any extension of cashless welfare arrangements beyond 30 June 2019 will require further amending legislative instruments as well as amended primary legislation.

Background

The Trial tests the concept of cashless welfare arrangements by disbursing particular welfare payments to a welfare restricted bank account, accessed by a debit card which does not allow cash withdrawals.

The Trial tests whether significantly reducing access to discretionary cash, by placing a significant proportion of a person's welfare payments into a restricted bank account, can reduce the habitual abuse and associated community level harm resulting from alcohol, gambling and drugs. It also tests whether cashless welfare arrangements are more effective when community bodies are involved.

The Trial has been conducted in two locations, the East Kimberley and Ceduna regions, selected on the basis of community support, high levels of welfare dependence and where gambling, alcohol and/or drug abuse are causing unacceptable levels of harm within the community.

Following amendments to the Act made by the *Social Services Legislation Amendment (Cashless Debit Card) Act 2018* the Goldfields area will become the third trial area.

This Determination will repeal and replace the *Social Security (Administration) (Trial - Declinable Transactions) Determination 2016* and *Social Security (Administration) (Welfare Restricted Bank Account) Determination 2016*.

These legislative instruments were due to cease operation on 30 June 2018.

This Determination will remake these two legislative instruments in a single legislative instrument which will commence on the day this Determination is registered on the Federal Register of Legislation and be repealed on 1 July 2019.

The Determination is a legislative instrument under the *Legislation Act 2003*.

Welfare Restricted Bank Account

Subsection 124PP(1) of the Act provides that the Secretary may, by legislative instrument, determine a kind of bank account to be maintained by a trial participant or voluntary participant in the debit card trial. Subsection 124PP(2) provides that the legislative instrument determining a kind of bank account may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account. This Determination is made for the purposes of section 124PP.

The Determination is a legislative instrument under the *Legislation Act 2003*.

Commencement

This Determination commences on the day it is registered on the Federal Register of Legislation.

Consultation

Goldfields

The Government has undertaken an extensive consultation process leading up to implementation of the program. Between May and December 2017 there have been over 170 meetings, with more than 300 people, involving over 86 different organisations.

Issues raised during these stakeholder consultations include:

- confusion between the BasicsCard and the Cashless Debit Card
- concerns in relation to stigmatisation and disempowerment of program participants
- adequate local partner arrangements
- ongoing provision of appropriate information.

To resolve confusion between the BasicsCard and the cashless debit card, Departmental staff explained the difference between the Income Management and Cashless Debit Card programs. Staff explained that while the BasicsCard only works at specific approved merchants, the cashless debit card is a standard Visa debit card that can be used at any merchant that accepts EFTPOS, except those selling alcohol or gambling. Officials outlined how the card is attached to an account which operates like a normal, mainstream banking product. It provides a range of flexible payment options including online transfers, BPAY, online shopping at approved merchants, and recurring deductions. The only time the card cannot be used is for the purchase of alcohol or gambling products, or to withdraw cash.

In many cases, an explanation of how the cashless debit card worked addressed concerns raised during the discussion. In particular, explanation of how the card works addressed concerns regarding stigmatisation and disempowerment. Community members were reassured by the fact that the card is universally accepted and operates as a standard debit card, with no separate queues for people who want to use the card at a store.

The Department of Social Services also held 10 community information sessions in Kalgoorlie, Leonora, Laverton, Coolgardie, Kambalda and Norseman, attended by more than 200 people. The sessions were open to the public and held at a range of times to ensure maximum community attendance. Consultations focussed on understanding the social issues in the region and providing information about how the cashless debit card works. To maximise engagement effort, the Department explored ways to connect with community members in less formal settings including small group sessions. While the Department heeded advice not to seek opinions from people immediately after explaining the program to them, but instead allow them time to digest the information and discuss with others in the community, many people volunteered their views. In addition, engagement occurred through established relationships to assist Departmental staff in meeting people in outlying Aboriginal communities.

Issues raised during the community information sessions included:

- timing and duration of the program
- technical issues, including availability of IT and phone charges
- dispelling misinformation about the functionality of the cashless debit card
- privacy concerns
- need for the program to be introduced

- how information about the program would be communicated to the community.

Departmental staff who attended the community information sessions provided factual information in response to issues raised. For example, information relating to the cashless debit card account functionality was provided to many participants including how participants could use the Indue app and could login through the online portal to complete online transfers. Common misconceptions about the program were also dispelled, including that the cashless debit card would not work at stores such as Aldi or that online transfers were not possible.

In terms of privacy concerns, Departmental staff noted how these issues were considered seriously by Government when developing the legislation that enables this Determination. It was noted that the legislation does not provide a blanket exemption from privacy laws for Government, Indue or the community panels. It simply allows the sharing of information that is necessary for the cashless debit card to operate. Staff also pointed out that safeguards are still in place to protect individual privacy and that any information shared between Indue and Government will occur within the requirements of the privacy laws, including the Australian Privacy Principles.

Engagement with the community as well as all of the feedback received was highly valuable in enabling the Department of Social Services to tailor communications products appropriately and ensure that program settings, including in relation to local partner arrangements, are suitable. To maintain this throughout the implementation phase, four reference groups were established in the region, consisting of shire representatives and community members, both Indigenous and non-Indigenous.

There was also feedback from consultations that providers need to work better together to support vulnerable people. Because of this feedback, the Department has also undertaken a high level analysis of Commonwealth government investment in the Goldfields region.

Ceduna

The Government, including officials from the Department of Social Services and Department of the Prime Minister and Cabinet have undertaken comprehensive engagement with people in Ceduna and the surrounding regions.

On 4 August 2015, key leaders from Maralinga Tjuratja (Oak Valley), the Ceduna Aboriginal Corporation, Yalata Community Incorporated, Koonibba Aboriginal Community Corporation, Scotdesco Aboriginal Corporation and the District Council in Ceduna signed a Memorandum of Understanding with the Commonwealth Government to participate in the trial. This was after a long, positive consultation process with the community leaders, proposed trial participants and merchants.

Those consulted include potential trial participants, Aboriginal leaders, family violence service providers, family support services, education providers, health providers, rehabilitation service providers, police, local government,

state government agencies, and the Department of Human Services local staff. The consultation format has included one-on-one meetings and group roundtables.

Consultations have covered a number of issues including seeking advice from community members about the identification of local and cultural protocol and preferred entry points for community discussion. Topics of discussion included:

- key trial objectives
- parameters (including percentages and trial boundaries)
- the anticipated benefits of the trial in terms of community safety/wellbeing for vulnerable people
- the identification of gaps and possible support services
- the role and formation of a community body
- the evaluation
- differences between the trial and income management.

The CDC program was designed and implemented in close consultation with community leaders. Approximately 300 consultations were held in the Ceduna Region. Those consulted included Indigenous leaders, community members, service providers, police, and local and state government agencies.

Consultations continue in the Ceduna region and have extended through the implementation of the trial and beyond to ensure the community is prepared and have all necessary information and support for the trial.

East Kimberley

Extensive on-the-ground consultations have been occurring in the East Kimberley region, where feedback has been very positive. On 24 July 2015, Indigenous leaders in the East Kimberley Ian Trust (Executive Chairman, Wunan Foundation), Desmond Hill (Chairperson, MG Corporation), and Ted Hall (Chairperson, Gelganyem Trust) wrote to Parliamentary Secretary, the Hon Alan Tudge MP, copying in the Hon Jenny Macklin MP to “*urge Federal Members of Parliament from all sides to listen to us on this matter and take a non-partisan position in order to allow this trial to proceed*”.

Those consulted include potential trial participants, Aboriginal leaders, family violence service providers, family support services, education providers, health providers, rehabilitation service providers, police, local government, state government agencies, and the Department of Human Services local staff. The consultation format has included one-on-one meetings and group roundtables.

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- parameters (including percentages and trial boundaries)
- the anticipated benefits of the trial in terms of community safety/wellbeing for vulnerable people
- the identification of gaps and possible support services
- the role and formation of a community body
- the evaluation
- differences between the trial and income management.

The CDC program was designed and implemented in close consultation with community leaders. Approximately 110 consultations were held in the East Kimberley region. Those consulted included Indigenous leaders, community members, service providers, police, and local and state government agencies.

Consultations continue in the East Kimberley region and have extended through the implementation of the trial and beyond to ensure the community is prepared and have all necessary information and support for the trial.

Welfare Restricted Bank Account

Intensive consultations with Indue Limited have been undertaken which have informed the development of this Determination.

Regulation Impact Statement (RIS)

This Determination is not regulatory in nature, will have minimal impact on business activity and will have no, or minimal, compliance costs or competition impact.

Explanation of the provisions

Section 1 states the name of the Determination.

Section 2 is a commencement provision which provides that this Determination commences on the day it is registered on the Federal Register of Legislation.

Section 3 provides that the Determination will be repealed at the start of 1 July 2019

Section 4 states that the Determination is made under 124PP(1) and 124PQ(2) of the Act.

Section 5 provides that each instrument that is specified in Schedule 1 to this instrument is repealed as set out in that schedule, and any other item in a schedule to this instrument has effect according to its terms. Schedule 1 provides for the repeal of the *Social Security (Administration) (Trial - Declinable Transactions) Determination 2016* and the *Social Security (Administration) (Welfare Restricted Bank Account) Determination 2016*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Section 6 defines terms used in this Determination. Many of the terms used in the Determination are defined in the Act, in particular Part 3D of the Act. These terms have therefore not been defined in section 6 of the Determination.

Under paragraph 13(1)(b) of the *Legislation Act 2003*, where enabling legislation confers on a rule-maker the power to make a legislative instrument, then, unless the contrary intention appears, expressions used in any legislative instrument so made have the same meaning as in the enabling legislation as in force from time to time.

Act means the *Social Security (Administration) Act 1999*.

excluded goods or services means goods or services specified in item (5) of Schedule 8 to this instrument.

Indue Limited means Indue Ltd (ABN 97 087 822 464).

trial period means the period specified in subsection 124PF(1) of the Act.

welfare restricted bank account is a bank account of the kind referred to in section 8 of this instrument.

Section 7 specifies that for the purposes of subsection 124PQ(2) of the Act, the kinds of businesses specified in Schedule 2, Schedule 3, Schedule 4, Schedule 5, Schedule 6 or Schedule 7 to this Determination are kinds of businesses in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution, without contravening Part IV of the *Competition and Consumer Act 2010*.

Section 8 provides for the kind of bank account to be maintained by a trial participant or voluntary participant for the receipt of restrictable payments during the debit card trial. The bank account is a debit card account established with Indue Limited. Indue Limited provides financial payment products and settlement services and has been engaged by the Commonwealth to provide welfare restricted bank accounts for the receipt of restrictable payments by trial participants and voluntary participants for the purposes of the debit card trial.

Section 9 provides for the terms and conditions of a welfare restricted bank account. The terms and conditions are set out in Schedule 8 to this Determination.

Schedule 1 provides for the repeal of the *Social Security (Administration) (Trial - Declinable Transactions) Determination 2016* and the *Social Security (Administration) (Welfare Restricted Bank Account) Determination 2016*.

Schedule 2 to this Determination lists, for the purposes of section 7 of this Determination, declared kinds of business by description.

Schedule 3 to this Determination lists, for the purposes of section 7 of this Determination, declared kinds of business by Merchant Category. A merchant category code is a four-digit number assigned to a business by credit card companies when the business first starts accepting one of these cards as a form of payment. For example, at item 1 of Schedule 3, the merchant category code of 4829, is for “Quasi Cash – Wire Transfer Money Order.”

Schedule 4 to this Determination lists, for the purposes of section 7 of this Determination, declared kinds of business by Australian New Zealand Standard Industrial Classification (ANZSIC) codes. ANZSIC codes were developed jointly by the Australian Bureau of Statistics (ABS) and Statistics New Zealand in order to make it easier to compare industry statistics between the two countries and with the rest of the world. A list of ANZSIC codes is available on the ABS website. For the purposes of this Determination, ANZSIC codes include for example, at item 1, ANZSIC code 1212 – Beer Manufacturing.

Schedule 5 to this Determination lists, for the purposes of section 7 of this Determination, declared kinds of business by reference to terminal identification codes. Terminal identification codes are codes identifying the specific terminal at which the purchase is being made. As the trial develops, specific terminal identification codes will be updated in the Determination to reflect different store terminals in the trial areas.

Schedule 6 to this Determination lists, for the purposes of section 7 of this Determination, declared kinds of business by reference to card accepted identification codes. These codes are generally at store level, for example Ceduna Grocery Store. As the trial develops, specific card accepted identification codes will be updated in the Determination to reflect different stores in the trial areas.

Schedule 7 to this Determination lists, for the purposes of section 7 of this Determination, declared kinds of business by reference to BPAY biller code. The table contains one biller code relating to purchase of on-line ‘money orders’ at Australia Post.

Schedule 8 sets out terms and conditions relating to the establishment, ongoing maintenance and closure of a welfare restricted bank account for the purposes of subsection 124PP(2) of the Act.

Schedule 8 is not intended to exclude other terms and conditions from being applied by the provider of a welfare restricted bank account. The bank account provided by Indue Limited may be subject to other terms and conditions that are similar in nature to the terms and conditions of any regular bank account. Schedule 8 sets out the terms and conditions that are particular to a welfare restricted bank account. Trial participants and voluntary participants in the debit card trial should obtain the full set of terms and conditions for their welfare restricted bank account from Indue Limited.

Single name

The welfare restricted bank account can only be opened in a single name and operated by the sole holder of the account. This means that it will not be possible for the account to be opened in joint names and no-one other than the holder will be able to operate the account.

Debit card provided

A debit card will be provided to the holder of a welfare restricted bank account. The debit card is a key feature of the trial of cashless welfare arrangements and a trial participant or voluntary participant will be able to use that card to purchase goods and services.

Depositing of cash

Any amount of cash can be deposited into a welfare restricted bank account. This term makes it clear that a trial participant, a voluntary participant or a third party, not just the Department of Human Services, can deposit money into a welfare restricted bank account.

No withdrawal of cash

Cash cannot be withdrawn from a welfare restricted bank account, whether through the use of a debit card attached to the account or by other methods of withdrawal.

Systems in place to prevent purchase of alcoholic beverages or gambling

Systems are in place which, so far as possible, prevent money in a welfare restricted bank account, and a debit card attached to that account, being used to purchase alcoholic beverages and gambling. These systems also apply to the purchase of gift cards, store cards or vouchers where those cards or vouchers allow for the purchase of alcoholic beverages or gambling. **Gambling** is defined in Schedule 1 to the Act to mean a service provided to a person in the capacity of a customer of a gambling service (within the meaning of the *Interactive Gambling Act 2001*).

Systems in place to prevent transferring of money

Systems are in place which, so far as possible, prevent a trial participant or voluntary participant transferring money from a welfare restricted bank account to another bank account that is not a welfare restricted bank account. There is an exception where the money is transferred for the purpose of enabling the trial participant or voluntary participant to purchase goods or services that are not alcoholic beverages or gambling.

Purchasing goods or services over the telephone or internet

In general, it will not be possible for a debit card attached to a welfare restricted bank account to be used to purchase goods or services over the telephone or internet. However, systems may be developed which will allow such a debit card to

be used for particular transactions over the telephone or internet where it is established that the particular transaction does not involve the purchase of alcoholic beverages or gambling.

No fees

Fees will not be charged by Indue Limited in relation to depositing money into a welfare restricted bank account, or in relation to providing an initial debit card.

No interest

Interest will not be charged by Indue Limited on balances in a welfare restricted bank account that are less than zero. Interest will not be paid on balances in a welfare restricted bank account.

Closure of account

A welfare restricted bank account provided to a person may be closed during the trial period only if the person is not a trial participant. The trial period is the period of 1 February 2016 to 30 June 2019, as mentioned in section 124PF of the Act. It would defeat the purpose of the debit card trial if a trial participant, or any other person, could unilaterally close an account during the trial while the person is a trial participant.

There will not be any restrictions on a voluntary participant closing a welfare restricted bank account during the debit card trial.

No automatic drawing or withdrawal of monies by a third party

It will not be possible to use the welfare restricted bank account in an arrangement involving automatic drawing or withdrawal of monies by a third party which is based on BSB and account number. This is because when money is automatically drawn on the basis of BSB and account number, it is not possible to ensure money is not being spent on alcoholic beverages or gambling. Participants can still set up automatic direct debits using their card number.

Limitations on spending and transfer of amounts

Limitations will be placed on the amounts a trial participant or voluntary participant can spend using a debit card attached to a welfare restricted bank account. Limitations will also be placed on the amounts a particular holder of a welfare restricted bank account can transfer out of his or her account. It is anticipated that a welfare restricted bank account will be limited to allowing only a 'housing payment' of up to a certain amount per week and an 'other expenses' payment of up to a certain amount per week. Individual limits will also be imposed on the amounts a particular holder of a welfare restricted bank account can transfer out of his or her account. This means it will be possible to set individual limits on individual trial participant's use of their account.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

*Prepared in accordance with Part 3D of the
Human Rights (Parliamentary Scrutiny) Act 2011*

*Social Security (Administration) (Trial – Declinable Transactions and Welfare
Restricted Bank Account) Determination 2018*

Overview of the Determination

This Determination is made by the Group Manager, Families & Communities Reform Group, as a delegate of the Secretary of the Department of Social Services, under subsections 124PP(1) and 124PQ(2) of the *Social Security (Administration) Act 1999* (the Act).

Subsection 124PP(1) of the Act provides that the Secretary may, by legislative instrument, determine a kind of bank account to be maintained by a trial participant or voluntary participant in the cashless debit card trial under Part 3D of the Act (the Trial). This Determination sets out the kind of bank account to be maintained by a participant in the Trial. Subsection 124PP(2) of the Act provides that the legislative instrument determining a kind of bank account may also prescribe terms and conditions relating to the establishment, ongoing maintenance and closure of the bank account. This Determination prescribes these terms and conditions.

In accordance with subsection 124PQ(2) of the Act, the Secretary may by legislative instrument declare a kind of business, whether by reference to merchant category codes, terminal identification codes, card accepted identification codes or otherwise, in relation to which transactions involving money in a welfare restricted bank account may be declined by a financial institution.

Human rights implications

Objectives

The Objectives of Part 3D of the Act and this Determination are to:

- (a) reduce the amount of certain restrictable payments available to be spent on alcoholic beverages, gambling and illegal drugs
- (b) determine whether such a reduction decreases violence or harm in the region
- (c) determine whether such arrangements are more effective when community bodies are involved
- (d) encourage socially responsible behaviour.

In other words, the cashless debit card has the objectives of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially

responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

Goldfields

In the Goldfields, there is clear evidence of the harm caused by alcohol. Recent Western Australia (WA) Police data show that between 2009 and 2013, alcohol was a factor in two thirds of all domestic assault offences and half of all non-domestic assault offences in the Goldfields region. This is 4.3 per cent and 14.4 per cent higher than the state average, respectively. In this past year (2016-17), Goldfields residents were more than twice as likely to be a victim of domestic or non-domestic assault as people living elsewhere in WA.

Between 2007 and 2011, the Goldfields region reported a statistically significant higher rate (1.25 times) of all alcohol-related hospitalisations than the corresponding state rate. Acute alcohol-related conditions that were significantly higher included assaults, road injuries and suicide.

As well as alcohol, illegal drug use is also causing intolerable levels of community harm in the Goldfields. Drug offenses have been rising in the Goldfields since 2009, and in 2013, residents were 2.5 times more likely to be charged with a drug-related offence than other WA residents. In this past year, WA Police data shows that Goldfields residents are also 1.5 times more likely to be charged with drug possession than other WA residents.

In a statement to the Senate Standing Committee for Community Affairs' inquiry into the *Social Services Legislation Amendment (Cashless Debit Card) Bill 2017*, Shire of Leonora CEO Mr James Epis said, "In the last three years, it has been devastating to see the escalation of antisocial behaviour between individuals caused by alcohol and drugs. This has often reached crisis levels." Shire of Laverton President Mr Patrick Hill told the Committee, "We are at wit's end. We want to see a safe community...We don't want to see this abuse. We don't want to see kids running around with dirty nappies on for a couple of days and no clothes."

In addition to unacceptable levels of alcohol, drug and gambling abuse, the Goldfields region also has a high level of welfare dependence among its residents. The then Minister for Human Services, the Hon. Alan Tudge MP, was invited by the Federal Member for O'Connor, Mr Rick Wilson MP, to meet with local leaders, including Indigenous leaders, to discuss how the cashless debit card could positively impact the community. After these meetings, Minister Tudge asked the Department of Social Services (the Department) to conduct an extensive consultation process with a wide range of stakeholders to further investigate social issues and gauge levels of support for the program. Consultations demonstrated that there is a willingness to participate from within the community and community members

recognise that the cashless debit card program could be a key tool to tackling social harm.

Ceduna

In the Ceduna region, there is also clear evidence of the harm caused by alcohol in the community. The deaths of six Indigenous people related to alcohol abuse and sleeping rough were the subject of a coronial inquest in 2011. In March 2013, the Ceduna Sobering Up Unit had 89.7% occupancy, there were breath alcohol readings of 0.40, which is as high as the machine measures, as well as many readings in the 0.30 to 0.40 range.

In a submission to the Senate Standing Committee on Community Affairs, the Mayor of Ceduna, Mr Alan Suter, provided an unsigned affidavit stating that in his role, he has participated in various initiatives to assist with the problems caused by alcohol abuse in Ceduna. Mr Suter stated that the most effective attempt 'was a restriction of sales [which] reduced the availability of take away alcohol and helped considerably until it was withdrawn by the licensees.'

As well as alcohol, illegal drug use and gambling were also causing unacceptable levels of harm in the Ceduna region. The Ceduna region has a high level of welfare dependence, and, importantly, there is an openness to participate from within the community.

East Kimberley

In the East Kimberley, there is clear evidence of the harm caused by alcohol. For example, Western Australia (WA) Police data demonstrates that in 2013-14 there were 1,456 offences against the person for every 100,000 people in the East Kimberley region. The East Kimberley region had offence rates against the person 4.5 times that of overall WA figures. In 2012-13, there were 100 reported incidents of family violence per 1,000 people in the Kimberley, as compared to the next highest of rate of family violence which was 43 per 1,000 people.

It is not appropriate for some persons to be trial participants, because their particular circumstances may make certain aspects of the cashless debit card impractical. Persons who live outside the trial area during term time for the purposes of completing their course of study may find it impractical to use a cashless debit card outside the trial area. For example, they will not have access to the same support services as trial participants who live within the trial area. Such students will not be within the class of trial participants.

Some welfare recipients are subject to income management under Part 3B of the Act. Persons whose usual place of residence is in East Kimberley, Ceduna or the surrounding region may be subject to income management under the child protection

measure of income management (section 123UC of the Act). Such persons will not be trial participants while they remain subject to this measure of income management.

Similarly, a person who was formerly a resident of the Northern Territory may be subject to income management under the disengaged youth or long-term welfare payment recipient measures (under section 123UCB or 123UCC of the Act). Such persons may remain subject to income management for 13 weeks despite their usual place of residence ceasing to be within a specified income management area. Such persons who take up residence in the trial area will not be trial participants while they remain subject to income management.

Similarly, a person who was formerly a resident of Queensland may be subject to income management under the Queensland Family Responsibilities Commission measure of income management (section 123UF of the Act). If such a person relocates to the trial area, they will not be a trial participant while they remain subject to income management.

For some persons, being a trial participant may seriously risk the person's mental, physical or emotional wellbeing. Where an officer of the Department of Social Services (who is a delegate of the Secretary) is satisfied that being a trial participant is seriously risking a person's mental, physical or emotional wellbeing, the officer may make an administrative decision resulting in that person no longer falling within the class of persons who are trial participants. Officers do not need to conduct an investigation into the mental, physical or emotional wellbeing of every prospective trial participant. It is only where officers are made aware of specific facts which indicate that an individual's trial participation may seriously risk that person's mental, physical or emotional wellbeing that they need to consider making the administrative decision resulting in that person no longer falling within the class of persons who are trial participants.

Officers will consider making this determination once they are made aware of facts, which indicate that being a trial participant may seriously risk a person's mental, physical or emotional wellbeing. Where an officer is satisfied that being a trial participant would seriously risk that person's mental, physical or emotional wellbeing at the beginning of the Trial and makes a determination to this effect, the person will not be a trial participant from the commencement of the Trial while that condition is met. If the serious risk to the person is only brought to an officer's attention during the course of the Trial, the determination may be made, resulting in the person not being a trial participant while that condition is met.

In February 2017, Orima Research released the Wave 1 Interim Evaluation Report on the Cashless Debit Card Trial Evaluation (the Report). The Report provided quantitative and qualitative analysis measured against predetermined key performance indicators and objectives of the Trial. The Report indicates that the Trial

is having positive early impacts in relation to alcohol consumption, illegal drug use, and gambling in the trial regions.

On 1 September 2017, Orima Research released the Final Evaluation Report. The Final Evaluation Report concluded that the Cashless Debit Card “has been effective in reducing alcohol consumption and gambling in both trial sites and [is] also suggestive of a reduction in the use of illegal drugs.”

In particular, the Final Evaluation Report found that:

- Of people who drank alcohol, 41 per cent (up from 25 per cent in the Wave 1 survey) reported drinking alcohol less frequently; 37 per cent of binge drinkers were doing this less frequently (up from 25 per cent at Wave 1).
- Across the two trial sites, on average, of trial participants surveyed who reported they do gamble, 48 per cent reported gambling less (up from 32 per cent at Wave 1).
- Of trial participants who used illegal drugs before the trial, 48 per cent reported a reduction in illegal drug use since the trial commenced, compared to 24 per cent in Wave 1.

The evaluation also found the card has had “widespread positive spill-over benefits”. For example, 45 per cent of participants reported being able to save more money than before being a trial participant (up from 31 per cent at Wave 1).

General safeguards

A number of general safeguards that help to protect human rights have been incorporated into the program and into this Determination.

First, the rollout of the program in the Goldfields and the trial areas of Ceduna and the East Kimberley has been subject to an extensive consultation process. The Department has formed four implementation working groups across the five Local Government Areas of the Goldfields region to ensure ongoing community consultation. The working groups will be a link between the Government and the community to identify and resolve issues that are specific to that area, and to ensure that people are supported in their transition to using the cashless debit card effectively in their daily lives.

A second safeguard lies in the ongoing monitoring of the impact the program is having on the community. The monitoring strategy involves collecting and reporting on robust sets of data from a wide range of sources

The third safeguard is that this Determination is repealed at the start of 1 July 2019. This gives Parliament the opportunity to review the program again.

The right to a private life

Article 17 of the *International Covenant on Civil and Political Rights (ICCPR)* sets out the right to a private life. It prohibits arbitrary or unlawful interferences with an individual's privacy, family, correspondence or home.

The program seeks to achieve the legitimate objectives of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.

In order to achieve these objectives, the program places 80 per cent of restricted payments received by a person on a trigger payment into a restricted bank account. Funds held in this bank account are not able to be withdrawn as cash, or to be spent on alcohol or gambling products.

There is a clear, rational connection between the program's objectives detailed above and the restrictions on the right to a private life. The program could not prevent participants from purchasing these products if the program did not restrict how, and at what businesses, participants spend their social security payment. In turn, these restrictions on the purchase of alcohol, illegal drugs and gambling products by participants in the Goldfields region are designed to reduce alcohol fueled violence and harm, and to encourage socially responsible behaviour. Given the objectives of this Determination and the prevalence of social harm in the Goldfields, any limitation on the right to a private life is reasonable and proportionate.

In designing the cashless debit card, the Government worked closely with communities to reduce any stigma associated with use of the card. The card looks and operates like a normal bankcard. Additionally, the card applies to participants across the region, in order to limit the availability of discretionary cash. It does not apply punitively to individuals experiencing harmful addictions, financial instability or other forms of hardship. Furthermore, the Final Evaluation Report identified that only four per cent of participants surveyed raised stigma or shame with the card as an issue.

This Determination implements the program in the Goldfields, Ceduna and the East Kimberley until 30 June 2019 and in doing so contributes to continuing to limit how, and at what businesses, participants can spend their welfare payment. It does this by ensuring that transactions performed at businesses that sell certain products, including alcoholic beverages, gambling or gift cards that could provide access to cash, are declined. In doing so, this Determination engages the right to a private life. Any limitation to the right to a private life is directly related to minimising such harms

given limitations are placed on the execution of transactions at businesses that sell those products.

This Determination determines the kind of bank account that must be maintained by a trial participant or voluntary participant in the debit card trial. In doing this, the Determination may limit the right to a private life. This limitation on a person's right to a private life is reasonable and proportionate given the extensive harm caused by alcohol and gambling in the trial areas as discussed above under the section titled 'Objectives'. The limitations are also directly related to limiting such harm given the provision of a particular kind of bank account as described in this Determination is essential to the ability to block certain transactions such as the purchase of products including alcoholic beverages, gambling or gift cards that could provide access to cash, alcoholic beverages or gambling.

The right to privacy

Article 17 of the *ICCPR* also sets out the right to privacy. This Determination determines the kind of bank account that will be provided to a trial participant or voluntary participant in the debit card trial. It also stipulates that various systems are in place to ensure the bank account will not allow the purchase of products including alcoholic beverages, gambling or gift cards that could provide access to cash, alcoholic beverages or gambling. These systems may require the provider of the bank account to have systems in place which monitor the transactions of trial participants to ensure, as far as possible, that such purchases are not made. Even if these systems did not require such monitoring, prudential obligations on the provider of the bank account as an authorised deposit-taking institution would require this monitoring. Any such monitoring would arguably engage the right to privacy.

This Determination seeks to achieve a legitimate objective and is necessary for the trial to operate effectively and to be evaluated. In order to ensure the bank account does not allow the purchase of products including alcoholic beverages, gambling or gift cards that could provide access to cash, alcoholic beverages or gambling, and to limit fraudulent transactions, the provider of the bank account will need systems in place to monitor transactions.

The Act allows the disclosure of information about a person to the Secretary by an officer or employee of a financial institution (Indue) if the person is a trial or voluntary participant and the information is relevant to the debit card trial.

It also seeks to achieve a legitimate objective and is necessary for the trial to operate effectively and to be evaluated. In order to establish bank accounts for trial participants, the Department of Human Services (DHS) will need to transfer customer information to Indue. Indue will then need to provide new account details back to DHS.

While the trial is operating, Indue will need to transfer information about trial participants (its customers) to the Department of Social Services (DSS). DSS will use this information to evaluate the trial. Without providing customer information to Indue, new accounts cannot be set up and so the trial could not proceed.

The Act does not provide a blanket authorisation for the disclosure of personal information by Government, or Indue. It only allows the sharing of information that is necessary for the trial to be implemented and evaluated.

This means there are still safeguards in place to protect individual privacy. Both Government and Indue Limited will be required to act in accordance with privacy laws, more generally, and the Australian Privacy Principles (APPs). APPs set out strict rules around how personal information can be used and disclosed. For example, APP 7 provides that unless certain exceptions apply, an organisation must not use or disclose personal information for the purposes of direct marketing. Notably, Government will not be able to see what people are purchasing.

Any limitation on a person's right to privacy is reasonable and proportionate given the extensive harm caused by alcohol in the Trial Area as discussed above under the section titled 'Objectives'. There are also effective community safeguards over the extent of the restrictions imposed.

The right to social security

Article 9 of the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* recognises 'the right of everyone to social security, including social insurance'. The United Nations Committee of Economic, Social and Cultural Rights (the UN Committee) has stated that implementing this right requires a country to provide 'a minimum essential level of benefits to all individuals and families that will enable them to acquire at least essential health care, basic shelter and housing, water and sanitation, foodstuffs, and the most basic form of education'.

The program does not limit a person's right to social security nor reduce the amount of social security. However, it does restrict the way social security is received to limit a person's ability to spend their social security entitlement on alcohol, gambling and illegal drugs. The limitation on how social security payments are received and spent is that they are paid into a restricted bank account that restricts the purchase of alcohol and gambling products. This is necessary to ensure that these products cannot be purchased with the restrictable portion of participant's social security payments. Without the diversion of social security payments into a restricted bank account, welfare quarantining would not be possible and the objectives of the program could not be met. This Determination implements the program in the Goldfields, Ceduna and the East Kimberley until 30 June 2019 and so continues to

restrict how social security is received to ensure that these objectives continue to be met.

The UN Committee has stated that the right to social security encompasses the right to access and maintain benefits 'in cash or in kind'. In other words, the program does not detract from situations in which someone has the right to social security, such as unemployment and workplace injury, and family and child support; it simply supports a person further once they have achieved their right to receive social security.

To the extent possible, the restricted bank account functions like a standard, mainstream bank account. This serves to minimise restrictions on the way social security is received. The cashless debit card itself is a standard Visa debit card that can be used at the vast majority of merchant that accepts EFTPOS. The account allows a range of flexible payment options including online transfers, BPAY, some online shopping and recurring deductions. As well as accessing these services online, a mobile application has been developed for use on smartphones. To support program participants, there are Local Partners on the ground who can assist with things such as a replacement cards and account balance checking. There are also online and mobile applications, as well as two telephone hotline services available through Indue and the Department.

The exemptions to the classes of persons who are program participants recognise and promote this right as they are designed to ensure individuals who could not fully participate in the program are not subject to restrictions on how they spend their welfare payments. Exemptions relate to issues such as location for outside trial area students, being subject to income management measures, having payment nominees receive welfare payments, or if being a participant would seriously risk the person's mental, physical or emotional wellbeing. Given the objectives of this Determination and the prevalence of social harm in program locations, any limitation on the right to social security is reasonable and proportionate.

The right to an adequate standard of living

Article 11(1) of the *ICESCR* states that everyone has the right to 'an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions' and that 'appropriate steps' be taken to 'ensure realisation of this right'. Further to this, article 11(2) of the *ICESCR* states that 'measures, including specific programmes,' should be taken in 'recognising the fundamental right of everyone to be free from hunger'.

This Determination implements the program in the Goldfields, Ceduna and the East Kimberley until 30 June 2019 and in doing so contributes to continuing to limit how, and at what businesses, program participants can spend their welfare payment.

This Determination promotes the right to an adequate standard of living. Moreover, in providing that various systems are in place to prevent, as far as possible, a welfare restricted bank account being used to purchase alcoholic beverages, gambling or gift cards that could provide access to alcohol, gambling or cash, this Determination will also promote the right to an adequate standard of living. It means that people are able to use restricted funds to access any goods, with the exception of alcohol and gambling products, with the aim of reducing abuse of these goods and the associated harm and violence.

This Determination will not have the effect of restricting access to essential needs required to maintain an adequate standard of living as the bank account can still be used like a normal bank account with the exception of the specific systems in place that amount to restrictions. The card will look and operate like a normal bank card and will work at all shops, except those selling alcoholic beverages and gambling, and cannot be used to withdraw cash. In fact, by restricting the amount of welfare payments that can be spent on alcoholic beverages and gambling, it will ensure more money is available for maintaining an adequate standard of living.

This Determination will not have the effect of restricting access to essential needs required to maintain an adequate standard of living. Access to some discretionary cash continues to be available, ensuring that people can still participate in cash economies to purchase items that contribute to an adequate standard of living.

The rights of equality and non-discrimination

The rights of equality and non-discrimination are provided for in several of the seven core international human rights treaties to which Australia is a party, most relevantly the *ICCPR* and the *Convention on the Elimination of All Forms of Racial Discrimination* (the *CERD*). In particular, article 5 of the *CERD* requires parties 'to prohibit and eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour or national or ethnic origin, to equality before the law', notably in the enjoyment of 'the right to... social security and social services' (article 5(e)(iv)).

Discrimination is impermissible differential treatment among persons or groups that result in a person or a group being treated less favourably than other groups, based on a prohibited ground for discrimination such as race. However, the UN Human Rights Committee has recognised that 'not every differentiation of treatment will constitute discrimination, if the criteria for such differentiation are reasonable and objective, and if the aim is to achieve a purpose which is legitimate under the Covenant'.

This Determination does not directly limit the rights to equality and non-discrimination. This is because, as set out in this Determination, all program participants are subject to the same restrictions on how and at what

businesses they can spend their welfare payment. The rights to equality and non-discrimination are not directly limited by this Determination. This is because, as set out in this Determination, anyone who is a trial participant will be provided with the same kind of bank account. This Determination is not targeted at people of a particular race, gender or cultural characteristic, but to program participants and voluntary program participants.

While this Determination does not directly limit the rights to equality and non-discrimination, it may indirectly limit these rights. In the Goldfields, Indigenous Australians are likely to make up approximately 45 per cent of those who will be CDC program participants and who will be affected by this Determination. In the East Kimberley and Ceduna regions, Indigenous people make up a substantial majority of the total income support payment population who are trial participants and who will be affected by this Determination.

It is acknowledged that Indigenous Australians comprise a large proportion of participants and those who will be affected by this Determination. However, the Goldfields, Ceduna and the East Kimberley were chosen as the locations because of objective criteria, such as “high levels of welfare dependence and community harm, as well as the outcomes of comprehensive consultation with prospective communities.”¹ The Government also sought the support of key Aboriginal and Torres Strait Islander leaders in the region, to uphold its commitment to work with First Australians.

Most social security recipients who are permanent residents of the locations will become participants. The reason for this comprehensive coverage is that the community wide impacts of harmful goods mean that the cashless debit card program can best meet its objectives when significant numbers of people in a program region who receive a social security payment participate in the program. The resulting large proportion of Indigenous participants reflects the fact that the regions has a large proportion of Indigenous social security recipients.

Selecting program locations because of high levels of community harm directly relate to the legitimate objectives of this Determination: to reduce high levels of community harm. In turn, this Determination affects only those who have been permanent residents of the locations, and those who volunteer for the program. Therefore, there is a rational connection between any limitation on the right to equality and non-discrimination and the objectives of this Determination.

¹ *Social Services Legislation Amendment (Debit Card Trial) Bill 2015*, Explanatory Memorandum, Statement of Compatibility, p. 3.

Finally, given the objectives of the Act and this Determination, as well as the scale of unacceptable harm in the program area as discussed above, any limitation on the right to equality and non-discrimination is reasonable and proportionate.

The right to self-determination

Article 1 of the *ICESCR* states that ‘all peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development’.

It may appear that the right to self-determination is engaged by this Determination. However, any such engagement of this right is reasonable and proportionate given the extensive harm caused by alcohol and gambling in the program area (again, as discussed above). Any limitation of this right is also directly related to limiting such harm, given the restrictions in this Determination being placed on the execution of transactions at businesses that sell certain products including alcoholic beverages, gambling or gift cards.

The rights of children

By ensuring that a portion of welfare payments is available to cover essential goods and services, welfare quarantining can improve living conditions for the children of welfare recipients. Such measures thereby advance the right of children to the highest attainable standard of health and the right of children to adequate standards of living (articles 24, 26 and 27 of the Convention on the Rights of the Child, respectively).

Conclusion

This Determination is compatible with human rights. An extension of the program will advance the protection of human rights by ensuring that income support payments are spent in the best interests of welfare payment recipients and their dependents. To the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate to achieving the legitimate objectives of reducing immediate hardship and deprivation, reducing violence and harm, encouraging socially responsible behaviour, and reducing the likelihood that welfare payment recipients will be subject to harassment and abuse in relation to their welfare payments.